

CHILDREN AND FAMILIES

DIVISION OF YOUTH AND FAMILY SERVICES

Dispute Resolution

Readoption with Amendments: N.J.A.C. 10:120A

Proposed: July 7, 2008 at 40 N.J.R. 3917(a).

Adopted: December 8, 2008 by Kimberley S. Ricketts, Commissioner, Department of Children and Families.

Filed: December 9, 2008 as R.2009, d.17, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 30:4C-4(h) and 26a.

Effective Date: December 9, 2008, Readoption;
January 5, 2009, Amendments.

Expiration Date: December 9, 2013.

Summary of Public Comments and the Agency Responses:

Comments were received from Diana Dunker, Esq., Legal Services of New Jersey.

N.J.A.C. 10:120A-1.1(a)4, 2.2(b)3, 2.5(a) and (e), and 4.3

1. COMMENT: Legal Services of New Jersey (LSNJ) recommends that the Division continue to allow clients a choice as to dispute resolution process, either an administrative hearing or a more informal dispositional review. The proposed amendments eliminate the “broad access” that they are intended to engender. The ability to proceed in stages from the informal to the formal makes the dispute resolution system

accessible to clients. That kind of self-determined process encourages and allows clients to appeal decisions that will have an adverse impact for their children and families.

RESPONSE: The Division is maintaining a dispute resolution program with two levels, preliminary efforts, and either an administrative hearing or a dispositional review. The Division's dispute resolution program is followed by Appellate Division review. The Division maintains that the streamlined dispute resolution process improves the clarity of the process and encourages expediency. Both benefit the client. The Division is adopting these sections as proposed.

N.J.A.C. 10:120A-1.3 and 4.3

2. COMMENT: Legal Services of New Jersey supports the Division's decision to expand the range of services defined as a "Division service issue." The Division is eliminating the right to appeal decisions regarding the Division of Youth and Family Services (DYFS) Legal Guardianship Subsidy Program and the DYFS Relative Care Permanency Support Program. There is no reasonable basis for the Division to eliminate a child's right to dispute a kinship legal guardianship (KLG) subsidy determination. This would be a deprivation of the child's property interests. See Mathews v. Eldridge, 424 U.S. 319, 333 (1976). LSNJ recommends that the Division eliminate the proposed language and restore a child's right to appeal an eligibility denial for the DYFS Legal Guardianship Subsidy Program and the DYFS Relative Care Permanency Support Program.

RESPONSE: The Division thanks Legal Services for its support.

The Division did not propose to eliminate the right to appeal decisions regarding the DYFS Legal Guardianship Subsidy Program. See N.J.A.C. 10:120A-1.3(a), definition of status issue, and recodified N.J.A.C. 10:120A-3.1(a)1, which provides dispute resolution for service providers. Based on the concern raised by Legal Services of New Jersey, the Division decided to maintain both the relative or family friend caregiver's right to appeal participation in the DYFS Legal Guardianship Subsidy Program as a status issue and the child's right to appeal a decision related to the DYFS Legal Guardianship Subsidy Program as a Division service issue. The Division is not adopting the proposed amendment to the definition of "Division service issue" at N.J.A.C. 10:120A-1.3(a) which would have removed DYFS Legal Guardianship Subsidy Program from the list of services included. The Division cannot keep the right to appeal a decision related to the DYFS Relative Care Permanency Support Program as the program no longer exists.

N.J.A.C. 10:120A-2.5

3. COMMENT: LSNJ recommends that the Division eliminate the proposed requirement that requests for dispute resolution be in writing. This will discourage Division clients from pursuing their right to appeal. The current system allows Division clients broad access to dispute resolution. The writing requirement would be the first of many hurdles placed in the way of children and families in need of Division assistance. LSNJ recommends that the Division continue to allow access to the dispute resolution process based on "any clear expression, oral or written." As an alternative, LSNJ recommends that the Division create a standardized form to request dispute resolution by

checking off their request. The form should be in the client's native language and at a minimum must be available in Spanish.

RESPONSE: The Administrative Hearings Unit accepts requests for dispute resolution in all languages so that the inability to write in English is not a barrier to the dispute resolution process. The Department is adopting the requirement that requests must be in writing in order for the Administrative Hearings Unit to more accurately understand, track and handle appeals in a timely and consistent manner. The Division thanks LSNJ for its suggestion regarding the creation of a standardized form to request dispute resolution. The Division will develop a dispute resolution request form, which will be made available to appellants.

4. COMMENT: At N.J.A.C. 10:120A-4.1(b), the proposed regulation allows Division staff to offer assistance "as necessary" in drafting hearing requests. That assistance is not required and applies only to requests for administrative hearings, not for dispositional reviews. The requirement to have written requests for dispute resolution discriminates against Division clients with limited English proficiency. See Lau v. Nichols, 414 U.S. 563 (1974), 45 C.F.R. 80.3(b)(2) and 68 Fed. Reg. 47311. LSNJ maintains that other State agencies that serve a similar client base use the language that the Division is attempting to eliminate with this proposed rule. See N.J.A.C. 10:87-8.1 and 10:90-9.1 and 9.3.

LSNJ is aware that the regulations allow for "a person acting as the appellant's representative" to make a request on their behalf. Most persons eligible for dispute resolution are not represented by counsel and would have limited access to such a

representative. The use of friends and family as “representatives” may result in unnecessary breaches of confidentiality. Division staff should also be required to assist clients in completing the form.

RESPONSE: The Division does not require a written request to access preliminary efforts in accordance with N.J.A.C. 10:120A-2.4. Clients may access this form of dispute resolution by requesting it either verbally or in writing. The Division agrees with the comment that a Division representative shall help the appellant to write his or her request for either an administrative hearing or a dispositional review, when asked to do so, and has changed N.J.A.C. 10:120A-2.5(a) to clarify that. Further, the Division accepts written requests for dispute resolution in any language.

N.J.A.C. 10:120A-3.1(a)2

5. COMMENT: LSNJ recommends that the Division eliminate the proposed language regarding substantiations of abuse or neglect since under the proposed regulations those appeals will be heard by the Office of Administrative Law. Proposed N.J.A.C. 10:120A-3.1(a)2 appears to contradict N.J.A.C. 10:120A-4.3.

RESPONSE: Amended N.J.A.C. 10:120A-3.1(a)2 addresses dispute resolution when a child has been removed from placement with a resource parent. The Division added another circumstance under which the resource parent may not receive dispute resolution regarding the child’s removal. Dispute resolution for a perpetrator of substantiated abuse or neglect is addressed at N.J.A.C. 10:120A-4.3. Recodified N.J.A.C. 10:120A-3.1(a)2v

states that a resource parent is not going to receive a dispositional review when a child has been removed from a resource home because of a substantiated finding of abuse or neglect. The Division has clarified this subsection by listing each circumstance that prohibits a resource parent from having a dispositional review as a separate subparagraph.

N.J.A.C. 10:120A-3.1(b)

6. COMMENT: LSNJ recommends that the Division delete the proposed amendment to N.J.A.C. 10:120A-3.1(b). Best interest determinations regarding a child's placement are not made unilaterally by the Division, but by the Superior Court. See N.J.S.A. 9:6-8.54 and 30:4C-61.2. The litigants can and should make recommendations as to the appropriate placement but the ultimate decision is under the court's authority.

RESPONSE: N.J.S.A. 30:4C-12.1 permits the Department to make determinations that a relative is either unwilling or unable to care for a child. Pursuant to the statute, relatives have the right to seek review of these decisions by the Department. N.J.S.A. 30:4C-12.1 does not provide for a Departmental review of decisions not related to the relative's unwillingness or inability to care for a child. Placement decisions made by the Division and based on other factors, such as the relatives' location or personal relationship between the child and the relative, are not subject to administrative appeal. The Division agrees that the statutes cited by LSNJ address the Court's role in placing children. The Division is adopting N.J.A.C. 10:120A-3.1(b) as proposed with addition of commas after appeal and issue, clarifying the rule to read "A relative does not have a right to

appeal, as a status issue, a Division action that it is not in a child's best interest to be placed with a relative."

N.J.A.C. 10:120A-3.2(c) and (d)

7. COMMENT: The proposed language allows a Review Officer to unilaterally determine that "an in-person meeting is not necessary" as part of a dispositional review. The proposed regulation offers no objective standard by which a Review Officer will make that determination, nor is there a requirement that the Review Officer notify the client of his or her decision. Mathews v. Eldridge, 424 U.S. 333, stands for the principle that a "fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." LSNJ recommends that the Division maintain the current language at N.J.A.C. 10:120A-3.2(c).

RESPONSE: The Division agrees with LSNJ's comment regarding the importance of allowing the appellant to choose an in-person meeting or a telephone conference. The Division agrees not to adopt the proposed amendments and to readopt the current N.J.A.C. 10:120A-3.2(c).

N.J.A.C. 10:120A-3.2(k)

8. COMMENT: Forcing clients without representation to file their appeals with the Appellate Division at the conclusion of a dispositional review, which may be limited to a document review and telephone conference, imposes an undue burden on clients attempting to exercise their right to appeal. LSNJ recommends that the Division continue

its prior process, which allowed Division clients to seek further review through the Office of Administrative Law. The process is less formal and therefore easier for pro se clients to access and navigate than the Appellate system.

If the Division decides to adopt the regulations as proposed, LSNJ recommends that the Division promulgate regulations requiring that disposition review decisions clearly identify the legal issues involved, the relevant regulation or statute, facts, evidence, witness testimony, conclusions reached and the basis for those conclusions.

RESPONSE: The amendments to N.J.A.C. 10:120A-3.2(k) do not eliminate any rights previously granted by these rules. The Division agrees that dispositional review decisions should contain the legal issues involved, the relevant regulation or statute, facts, evidence, witness testimony, conclusions reached and the basis for those conclusions. In order to clarify that this information is part of the written decisions, the Division is amending N.J.A.C. 10:120A-3.2(k) to state, “The Division shall forward written notification of the agency decision of the dispositional review, containing each element stated in N.J.A.C. 10:120A-3.2(i), within 60 business days of the completion of the dispositional review process...” The Division believes that referencing subsection (i) clarifies that these elements are addressed at the dispositional review and are reflected in the written decision resulting from the dispositional review.

N.J.A.C. 10:120A-4.1

9. COMMENT: LSNJ recommends that the Division promulgate regulations requiring that a Division notice “be specific as to the exact nature of the Division action” and the basis for that action.

RESPONSE: N.J.A.C. 10:129-5.4(c) requires the Division to provide specific information to persons identified as perpetrators of substantiated child abuse or neglect. The Division does not believe that it is necessary to reiterate that information in this rule.

10. COMMENT: LSNJ agrees with the Division’s proposed N.J.A.C. 10:120A-4.1(c), changing “shall” to “may.” This relaxes the requirement for information requests. This broadens access to the dispute resolution process for all Division clients.

RESPONSE: The Division thanks LSNJ for its support.

N.J.A.C. 10:120A-4.3

11. COMMENT: LSNJ requests clarification as to the dispute resolution process due for an applicant to become a caregiver for the DYFS Legal Guardianship Subsidy Program and the DYFS Relative Care Permanency Support Program. The summary to the proposal maintains that such determinations are subject to review pursuant to rule N.J.A.C. 10:122C-2.5, which provides for an administrative hearing. However, it is not included in N.J.A.C. 10:120A-4.3, which outlines cases that may be transmitted to the Office of Administrative Law.

RESPONSE: This chapter of rules does not cover disputes under N.J.A.C. 10:122C, Manual of Requirements for Resource Family Parents. See N.J.A.C. 10:120A-1.2(d). Therefore, transmission of appeals under N.J.A.C. 10:122C is not covered in this chapter.

Federal Standards Statement

42 U.S.C. §5106a(b)(1) requires a state plan, which specifies the areas of the child protective services system that the state intends to address with grant money received under the Child Abuse Prevention and Treatment Act. The state plan must assure that the state has provisions, procedures, and mechanisms by which individuals who disagree with an official finding of child abuse or neglect can appeal such a finding, in accordance with 42 U.S.C. §5106a(b)(2)(A)(xv)(II). The New Jersey Child and Family Services Plan contains this assurance. These rules allowing perpetrators of substantiated child abuse and neglect to have an administrative hearing by an Administrative Law Judge are in compliance with and do not exceed this section of the Federal law.

42 U.S.C. §671(a) requires states to have a state plan providing certain assurances in order for the State to receive money authorized by Title IV-E of the Social Security Act. 42 U.S.C. §671(a)(12) requires the State to grant an opportunity for a fair hearing to any individual whose claim for benefits is denied or not acted on with reasonable promptness. These rules assist New Jersey to meet the requirements of the statute by providing methods of dispute resolution to those who apply for a service funded by Title IV-E, among those who are covered by the chapter.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 1-:120A.

Full text of the adopted amendments follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks

[thus]):

CHAPTER 120A DISPUTE RESOLUTION

SUBCHAPTER 1. INTRODUCTION AND OVERVIEW

10:120A-1.1 Purpose

- (a) The purposes of this chapter are to:
 - 1.-2. (No change.)
 - 3. Identify who may appeal certain Division actions to the Office of Administrative Law (OAL); and
 - 4. Describe the procedures to request an administrative hearing before the OAL, except as limited by N.J.A.C. 10:120A-2.5, 4.1, 4.2 and 4.3.

10:120A-1.2 Scope

- (a) These rules describe the preliminary efforts provided by the Division to resolve disputes regarding:
 - 1. Services provided by or through the local offices;
 - 2. (No change.)
 - 3. Status issues for service providers of the Division pursuant to N.J.S.A. 30:4C-12.1, and in accordance with N.J.A.C. 10:132A.

(b) These rules describe the informal procedures available to resolve disputes through the Division's dispositional reviews.

(c) (No change in text.)

(d) An issue related to the denial, suspension, conditional approval, revocation or closure of an agency or program licensed, certified or approved by the Office of Licensing, Department of Children and Families, may be appealed in accordance with N.J.A.C. 10:121A-2.3 and 2.4, 10:122-2.5, 10:122C-2.4(d) and 2.5, 10:124-1.6, 10:126-5.8, 10:127-2.4 or 10:128-2.4 and, consequently, are not covered by these rules.

Recodify existing (d) and (e) as (e) and (f) (No change in text.)

(g) These rules do not govern questions of fact relating to contractual activities.

(h) (No change in text.)

10:120A-1.3 Definitions

(a) The definitions in N.J.A.C. 10:122B-1.3 and 10:133-1.3 are hereby incorporated by reference. In addition, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

“Administrative hearing” means a hearing held by the Office of Administrative Law (OAL) pursuant to N.J.S.A. 52:14B-9 et seq. and 52:14F-1 et seq., and N.J.A.C. 1:1.

“Administrative Hearings Unit” or “AHU” is the hearings unit of the Department responsible for monitoring and transmitting contested and uncontested cases, in accordance with N.J.A.C. 1:1-8.2 and 21.1, to the OAL.

“Agency decision” means any decision of the Division made as the result of a dispositional review and which is not a final agency decision.

“Appeal” means a request for modification or reversal of a Division action.

“Appellant” means the party who is requesting a reversal or modification of a Division action.

“Business days” means the five working days of a week, other than Saturday, Sunday and legal holidays.

“Department” means the Department of Children and Families.

“Dispositional review” means an independent examination of a Division action that is conducted by a Review Officer through a record and document review or by examining relevant records and documents and either convening a meeting of the relevant parties in the Division action under dispute or conducting a telephone conference.

“Division action” means a decision, plan or conduct by a Division representative, an Institutional Abuse Investigation Unit employee or an employee of the Office of the Public Defender acting as the Division’s agent in conflict matters within the scope of the individual’s official duties, which results in a “Division service issue,” a “status issue,” or

which may result in a contested case as specified in N.J.A.C. 10:120A-4.3(a), but does not include a personnel action.

“Division service issue” means a Division action affecting a case goal or a case plan necessary to achieve a case goal as allowed in N.J.A.C. 10:121-2.4 and 10:133D-2, and limited to: the denial of a request for, or the reduction, suspension or termination by a Division representative of the following services, as defined in N.J.A.C. 10:133-1.3 and listed in N.J.A.C. 10:133E-2: child care, *DYFS Legal Guardianship Subsidy Program.* discharge planning and aftercare services, domestic violence services, educational support, emergency maintenance service, family preservation services, health care services, homemaker service, mentor services, out-of-home placement, post-adoption services, pre- and post-natal services, psychological/therapeutic services, respite care, self-sufficiency skills, substance abuse services, Title XIX Medicaid, transportation; or parent and child visitation as described in N.J.S.A. 9:6B-4 and N.J.A.C. 10:122D-1; or the failure of a Division representative to act with reasonable promptness on a request for any of the above services.

“Final agency decision” means:

1. A final decision by the Commissioner or designee pursuant to N.J.S.A. 9:3A-6 that adopts, rejects or modifies an initial decision by an administrative law judge;
2. (No change.)
3. A final decision by the Review Officer, after a dispositional review conducted in accordance with these rules;

4. A Division action that becomes a final agency decision when the appellant does not choose to exercise his or her right to further dispute resolution; or

5. A final decision by the Commissioner or designee granting summary disposition and affirming a Division action.

“Finding” means the final determination made by a child protective investigator and his or her supervisor of the results of a child protection investigation.

...

“Institutional Abuse Investigation Unit (IAIU)” means the Department unit charged with the responsibility of investigating allegations of abuse or neglect in out-of-home settings, excluding DYFS operated facilities.

“Motion for Summary Disposition” means a motion that is prepared when no material facts are in dispute. If granted by the Commissioner or designee, a Motion for Summary Disposition denies the request for an OAL hearing and requires the Commissioner or designee to determine whether the Division action resulting from the undisputed facts is proper based on applicable law, regulations and policies, and accordingly to issue a final agency decision, affirming, reversing or modifying the Division action. If a motion for summary disposition is denied by the Commissioner or designee, the matter is transmitted to the OAL.

...

“Reduction” means the Division action about a service determined by the Division to be necessary for the achievement of the case goal, which Division action causes the client to

receive fewer hours or units of a service. Reduction does not include a change in provider or location of the service or a change in the schedule of the service that does not also cause fewer hours or units of the service.

...

“Resource parent” means a person licensed pursuant to N.J.S.A. 30:4C-27.3 et seq.

“Review Officer” means a Department representative who was not involved in the Division actions being appealed and who is charged with the responsibility of conducting a dispositional review as authorized by these rules.

“Service provider” means:

1. Each of a child’s relatives who is assessed for his or her willingness and ability to assume care of the child pursuant to N.J.S.A. 30:4C-12.1;
2. A relative or family friend caregiver or applicant in the DYFS Legal Guardianship Subsidy Program; or
3. A resource parent.

...

“Status issue” means:

1. The determination that a child’s relative is unwilling or unable to assume the care of the child pursuant to N.J.S.A. 30:4C-12.1(b); or

2. The denial or termination of a relative or family friend caregiver to participate or continue to participate in the DYFS Legal Guardianship Subsidy Program in accordance with N.J.A.C. 10:132A.

...

“Substantiated” means a finding when the available information, as evaluated by the child protective investigator and supervisor, indicates by a preponderance of the evidence that a child is an abused or neglected child as defined in N.J.A.C. 10:133-1.3 because the child victim has been harmed or placed at risk of harm by a parent or guardian, as defined in N.J.S.A. 9:6-8.21. A child who in good faith is under treatment by spiritual means alone through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall not, for this reason alone, be considered to be an abused or neglected child, nor shall this condition preclude the Division from providing service or seeking court relief as in N.J.A.C. 10:129-4.

(b) The following terms shall have the following meanings within N.J.A.C. 10:120A-1, 2 and 3, unless the context clearly indicates otherwise:

“Division” means the Division of Youth and Family Services, the Institutional Abuse Investigation Unit in the Department of Children and Families, or the Office of the Public Defender acting as the Division’s agent in conflict matters.

“Division representative” means a professional employee of the Division of Youth and Family Services, the Institutional Abuse Investigation Unit, or of the Office of the Public Defender acting as the Division’s agent in conflict matters.

10:120A-1.4 Construction

These rules shall be liberally construed to allow the Division to discharge its statutory functions. The Commissioner or designee may, upon notice to all parties, relax the application of these rules where the interest of justice and considerations of due process will be furthered thereby.

SUBCHAPTER 2. GENERAL PROVISIONS FOR DIVISION DISPUTE RESOLUTION AND ADMINISTRATIVE HEARINGS

10:120A-2.1 Notice of Division action to a service provider

(a) The Division shall provide proper notice to a service provider of a Division action that creates a status issue subject to a dispositional review under N.J.A.C. 10:120A-3.1(a)1.

(b) Except as limited by (c) below, the Division shall provide proper written notice 10 days in advance of a Division action, which is subject to a dispositional review under N.J.A.C. 10:120A-3.1(a)1. The written notice shall include:

1.-2. (No change.)

3. The name and address of a Division representative to contact to request a dispositional review.

(c) (No change.)

(d) The Division shall inform the resource parent immediately if the child is removed.

10:120A-2.2 Notice of Division action to a parent

(a) Except as limited by (d), (e), (f) and (g) below, the Division shall provide notice to a parent of a Division action that creates a Division service issue under N.J.A.C. 10:120A-4.3(a)1 at least 10 days in advance of the Division action to a parent requesting or receiving the service or a parent requesting the service on behalf of a child or a parent of a child receiving the service.

(b) Notice of the Division action as in (a) above shall include:

1.-2. (No change.)

3. The parent's right to an administrative hearing; and

4. The procedures for administrative hearings.

(c)-(f) (No change.)

(g) The Division may dispense with notice to the parent when:

1.-3. (No change.)

4. The client has been accepted for services in a new jurisdiction and that fact has been established by the local office previously providing services;

5. The client has relocated outside the jurisdiction of the local office or local agency providing services, and has not provided 30 days advance notice of such relocation to enable the Division to continue uninterrupted service if the client continues to be eligible for the service despite the relocation; or

6. (No change.)

10:120A-2.3 Notice of substantiated findings

The Division shall provide notice of a finding of substantiated child abuse or neglect to each perpetrator pursuant to N.J.A.C. 10:129-5.4(c).

10:120A-2.4 Preliminary efforts

(a) Field contacts, office interviews with supervisory or management personnel, and consultation with area and central office representatives comprise preliminary efforts to resolve matters under dispute. The Division representative shall advise the appellant that he or she has the opportunity to resolve a dispute using preliminary efforts prior to exercising a right to a dispositional review or an administrative hearing, if eligible.

(b)-(e) (No change.)

10:120A-2.5 Requests for dispositional reviews and administrative hearings

(a) Any person noticed of a Division action and entitled to appeal that Division action as set forth in N.J.A.C. 10:120A-3.1 may request a dispositional review or in N.J.A.C. 10:120A-4.3 may request an administrative hearing, as appropriate, within 20 days of notice of that Division action, or within 20 days of learning of the Division action, as provided in (b) below. Any written expression by an appellant, or a person acting as the appellant's representative, to the effect that the appellant wants the opportunity to present his or her case to a higher authority with regard to a Division action, constitutes a request for a dispositional review or an administrative hearing, as appropriate, when done in accordance with the notice provided. *A Division representative shall help the appellant write his or her request when the appellant requests help.*

(b) (No change.)

(c) Notice of a Division action shall provide contact information, including the address to which a request for an appeal is made.

(d) The recipient of the request to appeal a Division action shall forward that request to the appropriate resolution authority as specified in N.J.A.C. 10:120A-3.1 or 4.3 within one business day of receipt of the request to appeal a Division action.

(e) The Administrative Hearings Unit shall acknowledge in writing each request for appeal involving a matter described in N.J.A.C. 10:120A-3.1 or 4.3 within 10 business days. The written acknowledgment shall inform the appellant of the right to a dispositional review or an administrative hearing and the procedures for a dispositional review or an administrative hearing.

(f) The Division shall deem the appellant to have waived his or her right to a dispositional review or administrative hearing, if an appellant fails to request a dispositional review or an administrative hearing within the time limits established for appealing a Division action in accordance with (a) and (b) above, except that the Administrative Hearings Unit shall not deny the appellant's request if the reason for the delay in making the request was not within the appellant's control.

10:120A-2.6 Eligibility for continued service and status

(a) (No change.)

(b) Upon receipt of a request for a dispositional review or an administrative hearing for appealing a Division action in accordance with N.J.A.C. 10:120A-2.5(a) and (b), the status quo shall not be continued or reinstated when continuing or reinstating the service would pose a risk of harm or injury to a child, adult client or other adult related to the issue in dispute, including, but not limited to, the following circumstances:

1. The Division shall not return a child to the out-of-home placement from which a child has been removed because the child or any other child in the out-of-home placement has been abused or neglected or has been alleged to have been abused or neglected pursuant to N.J.S.A. 9:6-8.8 et seq. or when the out-of-home placement fails to meet the standards for continued approval, except as permitted in N.J.A.C. 10:122C-2.5(b) and 2.6(f);

2. (No change.)
3. The Division shall not continue or reinstate services or status pending the outcome of a dispositional review or administrative hearing when the appellant's behavior poses a threat to himself, herself or others;
4. The Division shall not continue or reinstate services or status pending the outcome of a dispositional review or administrative hearing when the matter is pending the results of an IAIU investigation; or
5. The Division shall not continue or reinstate services or status pending the outcome of a dispositional review or administrative hearing when the Division has determined that a child in an out-of-home placement or other care in a home or facility subject to the regulatory jurisdiction of the Department is in imminent risk of harm as a result of conditions in the home or facility.

10:120A-2.7 Final agency decision

- (a) (No change.)
- (b) For each agency decision the Commissioner or designee, shall:
 - 1.-2. (No change.)
- (c) For each initial decision, the Commissioner or designee shall review the record and any exceptions submitted by any party and issue the final agency decision within 45 days of receipt of that initial decision of the administrative law judge in accordance with N.J.A.C. 1:1-18.4.
 1. The Commissioner or designee shall inform the appellant that he or she can contact the Commissioner or designee to arrange an alternative means to submit exceptions, if the party cannot communicate in English or has a communication handicap. If the parties wish to take exception to the initial decision, such exception shall be submitted in writing to the Commissioner or designee, except where parties who are unable to communicate in English or have a communication handicap have made

arrangements with the Commissioner or designee for alternative means for submitting their exception.

(d) (No change in text.)

(e) The Division shall maintain an official record of each dispositional review and each administrative hearing for at least one year after the date the final agency decision is rendered. During this one-year period, the appellant or his or her legal representative may review, upon appointment, all or any part of the official and complete record of the dispositional review or administrative hearing, except as restricted by N.J.A.C. 10:120A-2.9.

Recodify existing (g) and (h) as (f) and (g) (No change in text.)

SUBCHAPTER 3. DISPOSITIONAL REVIEW

10:120A-3.1 When to hold a dispositional review

(a) When preliminary efforts described in N.J.A.C. 10:120A-2.4 have been declined by the appellant or have failed to resolve an issue and an appellant requests a dispositional review, and when the request is made in accordance with N.J.A.C. 10:120A-2.5, the Division shall provide a dispositional review with:

1. (No change in text.)

2. A resource parent who disagrees with the removal of a child receiving foster care in his or her resource home *[,]* when the child has been residing with the resource parent for at least six months, *except* when *[the]* *;*

i. The child is not being returned to a birth parent or relative*[, when the]* *;*

ii. The child is not being united or reunited with siblings for whom the resource parent cannot or will not provide a home *[, when the]* *;*

iii. The child is not being moved from a temporary placement to a permanent adoptive placement *;* *[and when the]*

iv. The child has not been removed from a resource home pending the completion of an IAIU child abuse and neglect investigation *;* or *[when the]*

v. The resource parent or household member has a finding of substantiated abuse or neglect in accordance with N.J.A.C. 10:129-5.3(a);

3. A resource parent who disagrees with the removal of a child who has been in the home continuously for six months or more for the purpose of finalizing an adoption;

4. A resource parent of one child in a sibling group who disagrees with the placement of a sibling with a separate resource family for either foster care or adoption consistent with N.J.S.A. 9:6B-4d; and

5. A resource parent who disagrees with the re-placement of a child needing foster care in another resource home consistent with N.J.S.A. 30:4C-53.3c(5).

(b) A relative does not have a right to appeal *;* as a status issue *;* a Division action that it is not in a child's best interest to be placed with a relative. A relative can appeal a Division action that the relative is either unwilling or unable to care for a child.

10:120A-3.2

Procedures related to dispositional reviews

(a)-(b) (No change.)

(c) The Review Officer *[may]* *shall* conduct a dispositional review through a telephone conference in lieu of having the parties present, when the *[Review Officer determines that an in-person meeting is not necessary or the]* appellant declines to meet in person with the Review Officer, but agrees to communicate by telephone.

(d) If there is no in-person or telephone meeting, the Review Officer shall conduct a record and document review in lieu of having the parties present.

Recodify existing (f)-(k) as (e)-(j) (No change in text.)

(k) The Division shall forward written notification of the agency decision of the dispositional review *, containing each element stated in N.J.A.C. 10:120A-3.2(i)* to the appellant within 60 business days of the completion of the dispositional review process and shall include notice of whether the appellant has a right or opportunity to appeal further in accordance with N.J.A.C. 10:120A-2.8 and, if so, notice of the procedures for initiating further appeals and the contact information, including the address and telephone number.

(l) The Division may deem waived any appeal opportunity that has not been exercised in accordance with the time frames specified in N.J.A.C. 10:120A-2.5(a) and (b), except that the Division shall not deny an appeal where the request for an appeal was delayed for reasons beyond the appellant's control.

SUBCHAPTER 4. ADMINISTRATIVE HEARINGS

10:120A-4.1 General provisions

- (a) (No change.)
- (b) The written request for an administrative hearing shall be specific as to the exact nature of the Division action in dispute. The Division representative shall help the appellant express his or her request, as necessary.
- (c) Upon receipt of a request for an administrative hearing, the Administrative Hearings Unit may request information from the appellant in order to make a determination as to whether material facts are in dispute. When such information is received, the Administrative Hearings Unit shall make a record thereof and determine

whether the appellant is entitled to an administrative hearing in accordance with N.J.A.C. 10:120A-4.3.

Recodify existing (e) and (f) as (d) and (e) (No change in text.)

10:120A-4.2 Motion for Summary Disposition

(a) When the Administrative Hearings Unit determines that an appellant is ineligible for an administrative hearing because of the absence of material disputed facts, the Administrative Hearings Unit recommends to the Director of Legal Affairs or designee that the matter is appropriate for a Motion for Summary Disposition.

(b) The Director of Legal Affairs or designee, in consultation with a representative of the Attorney General's Office, shall determine whether to proceed with a Motion for Summary Disposition, based on whether or not there are material facts in dispute.

1. When the Director of Legal Affairs or designee and the representative of the Attorney General's Office determine to proceed with a Motion for Summary Disposition because no material facts are in dispute, the case shall be transmitted to the Attorney General's Office for assignment for preparation of the Motion for Summary Disposition.

2. When the Director of Legal Affairs or designee and the representative of the Attorney General's Office determine not to proceed with a Motion for Summary Disposition, because material facts are in dispute, the matter shall be transmitted to the OAL in accordance with N.J.A.C. 10:120A-4.3.

(c) The assigned representative of the Attorney General's Office transmits the completed Motion for Summary Disposition to the Commissioner or designee, and, in accordance with N.J.A.C. 1:1-12.2, to the appellant.

1. The appellant shall have 10 days to file exceptions with the Commissioner or designee.

(d) If, after reviewing all materials and any exceptions filed by the appellant and responses by the Attorney General's Office pursuant to N.J.A.C. 1:1-18.4(d), the Commissioner or designee determines that no material facts are in dispute, the Commissioner or designee shall sign an order denying the appellant's request for an administrative hearing. The Commissioner or designee shall then determine whether the Division action resulting from the undisputed facts is proper based on applicable law, regulations and policies. The Commissioner or designee shall affirm, reverse, or deny the Division action and issue a final agency decision accordingly.

1. (No change.)

(e) If, after reviewing all materials and any exceptions filed by the appellant and responses by the Attorney General's Office pursuant to N.J.A.C. 1:1-18.4(d), the Commissioner or designee determines that material facts are in dispute, the Commissioner or designee shall sign an order denying the Motion for Summary Disposition and granting the request for an administrative hearing.

1. (No change.)

10:120A-4.3 Transmittal to OAL

(a) The Administrative Hearings Unit shall transmit a matter that constitutes a contested case, pursuant to N.J.A.C. 1:1-1.1, to the Office of Administrative Law, including:

1. A request by a parent of a child under the supervision of the Division, a child under the supervision of the Division, or a person with physical custody acting on behalf of that child, or a sibling of that child, or a relative as defined to dispute a denial, reduction, suspension or termination regarding a Division service issue, unless the denial, reduction, suspension, or termination is an across the board action resulting from a reduction in Federal or State funding; or

2. (No change.)

(b) The Commissioner or designee, at his or her discretion and with the concurrence of the Director of the Office of Administrative Law, may transmit an uncontested case for an administrative hearing before an administrative law judge in accordance with N.J.A.C. 1:1-2.1.

(c) The Administrative Hearings Unit shall not transmit the following requests to the Office of Administrative Law:

1. Requests to appeal the terms of a court order which specifically addresses the disputed Division action;
2. Requests to dispute the Division's use of a specific service provider in the provision of out-of-home placement when the Division has offered an appropriate alternative to meet the case goal or a change in the out-of-home placement of a child without constituting a reduction of services;
3. Requests to dispute a finding of substantiated child abuse or neglect or other Division action being processed in accordance with N.J.A.C. 10:120A-4.2; or
4. Requests to dispute any matter referenced in N.J.A.C. 10:120A-3.1.